

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TROY ANTHONY TRIM,

Defendant-Appellant.

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UNPUBLISHED

March 10, 2005

No. 251328

Genesee Circuit Court

LC No. 01-007326-FC

Before: Fort Hood, P.J., and Griffin and Donofrio, JJ.

PER CURIAM.

Defendant appeals as on leave granted after remand from the Supreme Court his plea-based conviction for armed robbery. MCL 750.729. We reverse and remand for resentencing. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

At sentencing, there were no objections to the guidelines scoring, and the applicable range was 21 to 35 months. The trial court departed from the guidelines, finding that the range did not reflect the seriousness of the offense, where defendant terrorized the victim. The court found a longer sentence was required for deterrence and to allow defendant the opportunity to deal with his substance abuse problem. Defendant was sentenced to five to fifteen years' imprisonment.

A sentencing court may depart from the appropriate sentence range established under the sentencing guidelines if the court has a substantial and compelling reason for the departure, and states the reason on the record. MCL 769.34(3). The existence of a particular factor is a factual determination reviewed for clear error. *People v Babcock*, 469 Mich 247, 264; 666 NW2d 231 (2003). The determination that a factor is objective and verifiable is reviewed as a matter of law. *Id.* The determination that the objective and verifiable factors constitute substantial and compelling reasons to depart from the statutory minimum sentence is reviewed for abuse of discretion. *Id.*, 265.

Substantial and compelling reasons exist only in exceptional cases and reasons justifying departure should keenly or irresistibly grab the court's attention and be recognized as having considerable worth in determining the length of a sentence. *Id.*, 257. A court may not depart from a sentencing guidelines range based on an offense characteristic or offender characteristic already considered in determining the guidelines range unless the court finds, based on facts in

the record, that the characteristic was given inadequate or disproportionate weight. MCL 769.34(3).

If the sentence constituted a departure from the guidelines range and this Court finds that the trial court did not have a substantial and compelling reason for the departure, this Court must remand for resentencing. MCL 769.34(11), *Babcock, supra* at 265. The trial court erred in failing to acknowledge that it was relying on a factor, terrorism, that was already considered in the guidelines. The court was required to make a determination whether the characteristic was given inadequate weight. In the absence of a finding by the trial court, this Court cannot make such a determination on appeal. *Id.*

Reversed and remanded for resentencing. We do not retain jurisdiction.

/s/ Karen M. Fort Hood  
/s/ Richard Allen Griffin  
/s/ Pat M. Donofrio